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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D. C. 20548

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STATEMENT OF
ELMER B. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON BUDGETING, MANAGEMENT AND EXPENDITURES
COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES SENATE

JEW 1510

Mr. Chairman and Members of the Subcommittee:

We appreciate very much the opportunity to discuss with you the provisions of title IV of S. 2049, the proposed Accounting and Auditing Act of 1973, relating to the Comptroller General's statutory rights to have access to records of the Federal agencies and certain public or private entities receiving Federal assistance.

At the outset, I would like to point out that title IV does not expand our statutory authority relating to access to records of Federal agencies, contractors, and recipients of Federal assistance. It establishes a procedure for obtaining the records to which we are entitled by law. It provides a means of enforcing those rights after a Federal court has issued a declaratory judgment stating that we have a statutory right to the specific records involved. Also, we do not have authority for access to the records of international lending agencies and this title would not provide such authority. However, we do have a right for access to the records of the Federal agencies which are responsible for the Federal Government's participation in the international lending agencies. We believe the Congress is entitled to know how effective such Federal agencies are in carrying out such responsibilities.

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Mr. Chairman, one of the most important duties of GAO is to make independent reviews of agency operations and programs and to report to the Congress on the manner in which Federal departments and agencies carry out their responsibilities. The Congress, in establishing GAO, recognized that the Office would need to have complete access to the records of the Federal agencies.

The more important factors underlying the law, the intent of the Congress, and the GAO's policy of insisting on generally unrestricted access to pertinent records of agencies and contractors in making audits and reviews are:

1. An adequate, independent, and objective examination contemplates obtaining a comprehensive understanding of all important factors underlying the decisions and actions of the agency or contractor management relating to the subject of GAO examinations.
2. Enlightened management direction and execution of a program must necessarily consider the opinions, conclusions, and recommendations of persons directly engaged in programs that are an essential and integral part of operations. Similarly, knowledge of this type is just as important and essential to us in making an independent review and evaluation as it is to management in making basic decisions.
3. Agency internal audits and other evaluative studies are absolutely necessary. They are important tools by which management can keep informed of how large and

complex activities are being carried out. Knowledge of the effectiveness with which internal review activities are carried out and the effectiveness with which corrective action where needed is taken is absolutely necessary to GAO in the performance of its responsibilities.

4. Availability of internal audit and other evaluative documents to GAO enables us to concentrate a greater part of our efforts in determining whether action has been promptly and properly taken by agency officials to correct identified weaknesses, and helps eliminate duplication and overlapping in audit efforts.

From this discussion, I believe it is self-evident that the GAO, as an oversight arm of the Congress, cannot be effective if it does not have full access to records, information, and documents pertaining to the subject matter of an audit or review. The intent of the various laws assigning authority and responsibility to the GAO is clear on this point. The right of generally unrestricted access to records is based not only on laws enacted by the Congress but is a necessary adjunct to the duties and responsibilities of the Comptroller General. Let me quote from two general statutes to make my point doubly clear.

LEGISLATIVE REORGANIZATION ACT OF 1946

Expenditure Analyses by Comptroller General

Sec. 206. The Comptroller General is authorized and directed to make an expenditure analysis of each agency in the executive branch of the Government (including Government corporations) which, in the opinion of the Comptroller General, will enable Congress to determine whether public funds have been economically and efficiently administered and expended. Reports on such analyses shall be submitted by the Comptroller General, from time to time, to the Committees on Government Operations, to the Appropriations Committees, and to the legislative committees having jurisdiction over legislation relating to the operations of the respective agencies, of the two Houses.

LEGISLATIVE REORGANIZATION ACT OF 1970

Assistance to Congress by General Accounting Office

Sec. 204. (a) The Comptroller General shall review and analyze the results of Government programs and activities carried on under existing law, including the making of cost benefit studies, when ordered by either House of Congress, or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses, having jurisdiction over such programs and activities.

(b) The Comptroller General shall have available in the General Accounting Office employees who are expert in analyzing and conducting cost benefit studies of Government programs. Upon request of any committee of either House or any joint committee of the two Houses, the Comptroller General shall assist such committee or joint committee, or the staff of such committee or joint committee--

(1) in analyzing cost benefit studies furnished by any Federal agency to such committee or joint committee;
or

(2) in conducting cost benefit studies of programs under the jurisdiction of such committee or joint committee.

Where the Congress has chosen to limit the scope of GAO's audit responsibilities, it has done so in specific statutes. Title IV does not modify these restrictions. For example, the GAO does not have responsibility for auditing the activities and operations of agencies such as the Federal Reserve Board and the Comptroller of the Currency, which agencies derive their financial support by contributions from member banks. Likewise, Congress has explicitly provided that certain confidential funds be exempt from GAO scrutiny. In other words, the Congress has chosen to limit GAO explicitly with respect to particular statutes and particular programs. In the absence of such restrictions, we believe that the Congress intended that the basic authority and responsibility of the GAO applies.

I would like to emphasize that we have had generally good cooperation from the executive branch in obtaining access to information needed to carry out its responsibilities. Generally, there has been a recognition on the part of the executive branch that the GAO must have information if it is to make valid judgments. Without adequate information, there is a danger that our conclusions and recommendations will be based upon incomplete or inaccurate data. Therefore, there is a risk that the Congress and the public can be misled and a disservice rendered to the operating agencies unless there can be reasonable confidence that the information on which our conclusions and recommendations have been developed is full and complete.

We in the GAO have long recognized the sensitivity of the role which we play in that we are, as an outside party, issuing reports--mostly public reports--which may be critical of the manner and effectiveness with which executive branch programs are carried out. Recognizing this sensitivity, we have attempted to "lean over backwards" to obtain all of the pertinent facts and to afford the agency an opportunity orally and in writing to state the facts as they see them, together with any differences of opinion as to the conclusions and recommendations contained in our reports.

This effort on our part to adhere to strict standards of objectivity and fairness has been an important factor in obtaining cooperation from agencies which we need to carry out our responsibilities. An example of where such cooperation did not exist was the action of the Secretary of the Treasury in denying access by the General Accounting Office to the records of the Emergency Loan Guarantee Board in December 1971, in which he stated that "the Board concluded at its meeting on November 17 that it was not the intent of Congress that the General Accounting Office review its decisions." He further stated that the Board found nothing in the legislative history to suggest that the Congress intended that GAO should review the work of the Board, indicating "the Board as constituted by the Congress is uniquely well qualified to make the determinations called for by the Guarantee Act, including the critical finding of whether failure to guarantee a loan would have an adverse effect on the economy."

While the records in this case were subsequently made available, the Treasury did so only because of the intervention of the House and Senate banking and currency committees. In making the records available, however, the Executive Director of the Board stated that "we continue to believe that the GAO does not have the statutory authority to review the Board's internal records relating to its decision-making process." The Board supported this position in its first Annual Report of July 31, 1972.

Treasury also made the argument that the GAO was attempting to seek access to records relating to matters for which a decision has not yet been made. The argument was then extended to encompass all information even where decisions had actually been reached.

I would like to take this additional opportunity to clarify this point. We do not expect to receive nor do we need to receive access to information relating to decisions not yet made. We do not need nor do we seek authority to obtain such information prior to decision-making to carry out our present responsibilities.

We can fully appreciate the executive branch position of not releasing internal working papers involving tentative planning data until a decision has been reached. Our problems, however, involve the withholding of such information after a decision has been reached. If we are to make intelligent, effective and useful evaluations of management processes and results of on-going programs, it is essential that we have access to the information available to and used by those involved in the decision-making process.

It also is essential that we have access to the records on a timely basis. A substantial obstacle to our efforts in securing information consists of laborious internal agency review and clearance processes which are applied to our requests for certain types of information. Examples of this practice include "screening" of files and referrals to Washington of requests made by our auditors at overseas locations. Such practices do not of themselves amount to denials of access. However, the delays which they occasion can have a costly and crippling effect upon the conduct of our audits and reviews, and present a serious practical impediment to the efficient accomplishment of our work. I believe that merely having this proposed title IV authority will go a long way in reducing the time period of these delays in making the records available.

With respect to the specific provisions of title IV of S. 2049, I would like to state again that the proposed language in title IV does not and is not intended to expand our existing authority relating to access to records. The thrust of title IV is to provide a means for judicial determination of our statutory authorities relating to access to records and enforcement provisions to be used to require compliance with such statutory access to records provisions as construed by the courts.

Section 401 proposes an amendment to section 313 of the Budget and Accounting Act, 1921. Section 313 of the 1921 act, which is our existing general authority for access to records of all "departments and establishments" of the Government, provides:

> All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activies, organization, financial

transactions, and methods of business of their respective offices as he may from time to time require of them: and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purposes of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 291 of the Revised Statutes.

The proposed subsection (a) is merely a clarification of the existing authority. The primary change is the deletion of the word "financial" from the term "financial transactions." It has been contended by a few persons from time to time that the term "financial transactions" relates only to records concerned with the accounting and disbursement of funds. There is no merit in such contentions. The fact of the matter is that the term "financial transactions" has been used in a very broad sense in most of our basic legislation including the Budget and Accounting Procedures Act of 1950, one purpose of which was to clarify our authority to make comprehensive audits of Federal departments and agencies at the sites of their agencies. The deletion of the word "financial," in our opinion, is not a substantive change, but a clarification to avoid any further contentions concerning its meaning. The only other two changes in section 313 are the substitution of the terms "Except as otherwise specifically provided by law" and "operations" for the last sentence of section 313 and the term "methods of business," respectively. Both of these changes are also clarifications.

The proposed subsection 313(b) constitutes general legislation relating to all recipients of Federal assistance obtained other than by formal advertising. The purpose of this subsection is to avoid the need for enactment of this language in each law providing for such Federal assistance. It would also avoid the confusion resulting from the use of different language used in drafting the various bills even though the basic intent and principle are involved. Substantially similar provisions of law are now contained in more than sixty different laws, twenty-two of which were enacted in the 92d Congress. Citations to such laws are included in Attachment I to this statement.

We also have access to the records of contractors (including their subcontractors) whose contracts are negotiated under the provisions of both the Armed Services Procurement Act and the Federal Property and Administrative Procedures Act of 1949. Title IV will not affect the provisions in these two acts relating to access to records of the contractors. However, we do not have access to the records relating to contracts awarded under formal advertising procedures nor does title IV provide such authority.

The proposed section 402 would provide a means of enforcing the Comptroller General's right of access to records which does not presently exist. In cases where access to records which the Comptroller General believes he is entitled by law to have has been denied or delayed, he may obtain a declaratory judgment by a Federal three-judge court as to the rights and other legal relations of the parties under the applicable

laws. If the courts determine that the Comptroller General has the right of access to such records, I believe the departments and agencies will make the records available. If such records are not then made available, however, the ultimate remedy as a last resort and one which I trust will not be necessary would be the cutoff of appropriations to the governmental unit under review. Such cutoff of appropriations, however, under subsection 402(d)(2) would not be made if the Senate or House, upon the expiration of thirty calendar days after the Committees on Government Operations are notified of the proposed cutoff of appropriations, passes a resolution stating that it does not favor such cutoff.

Section 403 provides, as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, the internal procedures for consideration of the resolution by the Senate and the House of Representatives. It provides for the same procedures provided for the consideration of reorganization plans submitted by the President under the various reorganization acts.

Mr. Chairman, some interest has been expressed as to our access to proprietary information of the types referred to in 18 U.S.C. 1905. We have always had access to proprietary information of the types referred to in 18 U.S.C. 1905 and have established procedures designed to control the release of such information. Our reports to the Congress are authorized by law, and our disclosure of proprietary information in these reports is not prohibited by law. If we determine that it is necessary to include such information in a report to properly present our findings or conclusions, the matter is required to be specifically cleared with our Office of General Counsel.

When proprietary information is contained in reports we include a notification that the report contains proprietary information, the disclosure of which might be a violation of 18 U.S.C. 1905.

Each report containing proprietary information is required to be brought to my specific attention prior to signature of the transmittal letter. Whether it is necessary to make such proprietary information available to anyone other than its source or to another Government agency is a matter of judgment which I must exercise in each individual case depending on the nature of the information and the needs of the recipient of the report. Since 1966, when I became Comptroller General, there have been no problems with our handling of proprietary information.

Let me give you two recent examples of work we have done where we have obtained access to proprietary or confidential information and the manner in which we handled the release of such data.

In a report to the Subcommittee on Activities of Regulatory Agencies Relating to Small Business, House Select Committee on Small Business, dated June 27, 1973, we included our findings on certain alleged improprieties of Government loans to a small business. In that report we did include financial information of the company. We had both actual and estimated sales, costs, and profits as well as financial ratios. Accordingly, in transmitting the report, we alerted the chairman to the fact that the report included proprietary data by stating:

> This report contains information, the disclosure of which may be prohibited by the United States Code (18 U.S.C. 1905). The referred to statute makes it a criminal offense to disclose, among other things, the "amount or sources of any income, profits, losses, or expenditures" of any person or firm.

In a report issued on July 9, 1973, to a Member of the Congress, we provided information relating to the funding and operations of a private nonprofit corporation which carries out certain activities under agreements with the Department of Agriculture. Since certain of the information was considered to be confidential by the corporation, we did not include that information in the report, but instead transmitted it to the Member in a separate letter and advised him that the corporation considered the information confidential and its disclosure may violate 18 U.S.C. 1905.

Attachment II to this statement sets out some of the more serious access to information situations with which we have been concerned. I request that Attachments I and II to this statement be made a part of the record.

Mr. Chairman, this concludes my prepared statement. I would be glad to answer any questions.

ATTACHMENT I

LEGISLATION PERTAINING TO GAO's ACCESS TO RECORDS OF RECIPIENTS OF FEDERAL ASSISTANCE

A. DURING THE NINETY-SECOND CONGRESS

Public Law 92-70, August 9, 1971, 85 Stat. 178, Emergency Loan Guarantee Act, creates an Emergency Loan Guarantee Board to guarantee loans to major business enterprise. Section 7(b) requires the General Accounting Office to make a detailed audit of transactions of any borrower with respect to which an application for a loan guarantee is made under this Act. The General Accounting Office is to report the results of such audit to the Board and to the Congress. (85 Stat. 180)

Public Law 92-75, August 10, 1971, 85 Stat. 213, Federal Boat Safety Act of 1971, authorizes the establishment of State Boating Safety Programs and the allocation of Federal financial assistance to the States. The Comptroller General is provided access for the purpose of audit to records pertinent to Federal funds allocated. (85 Stat. 225)

Public Law 92-184, December 15, 1971, 85 Stat. 627, Supplemental Appropriations Act, 1972, contains a requirement that all grant agreements provide that the General Accounting Office shall have access to the records of the grantee which bear exclusively upon the Federal grant in the case of manpower training services of the Manpower Administration, Department of Labor (85 Stat. 630) and the economic opportunity program of the Office of Economic Opportunity (85 Stat. 633).

Public Law 92-242, March 8, 1972, 86 Stat. 48, Foreign Assistance and Related Programs Appropriation Act, 1972, contains a provision for access to records of the Inspector General, Foreign Assistance, by the General Accounting Office unless the President certifies that he has forbidden the Inspector General to furnish the records and the reason for so doing. (86 Stat. 55)

Public Law 92-255, March 21, 1972, 86 Stat. 65, the Drug Abuse Office and Treatment Act of 1972, establishes among other Federal programs, drug abuse prevention formula grants and special project grants and contracts. Section 411 provides the Comptroller General access to records of grant recipients under these programs. (86 Stat. 83)

Public Law 92-257, March 21, 1972, 86 Stat. 87, relating to the Trust Territory of the Pacific Islands, establishes the Trust Territory Economic Development Loan Fund and provides the Comptroller General access for the purpose of audit and examination to the relevant records of the government of the Trust Territory. (86 Stat. 88)

Public Law 92-258, March 22, 1972, 86 Stat. 88, amends the Older Americans Act of 1965 to provide grants to States for the establishment, maintenance, operation, and expansion of low cost meals projects, nutrition training and education projects, opportunity for social contacts, and for other purposes. Section 106(b) provides access to records by the Comptroller General as they pertain to grants or contracts received from the States. (86 Stat. 94)

Public Law 92-316, June 22, 1972, 86 Stat. 227, amends the Rail Passenger Service Act of 1970 in order to provide financial assistance to the National Railroad Passenger Corporation. In connection with audits of the financial transactions of the Corporation, the Comptroller General is provided access to the records of any railroad with which the Corporation has entered into a contract for the performance of intercity rail passenger service and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. (86 Stat. 233)

Public Law 92-318, June 23, 1972, 86 Stat. 235, Education Amendments of 1972, adds a new section 417 to the General Education Provisions Act to provide for review, audit and evaluation of Federal education programs by the Comptroller General with particular attention to the practice of Federal agencies contracting with private firms for a wide range of educational program studies and services. (86 Stat. 334)

Public Law 92-326, June 30, 1972, 86 Stat. 391, provides for the establishment of the Tinicum National Environmental Center to preserve from imminent destruction the last remaining true tidal marshland in the Commonwealth of Pennsylvania. The Secretary of Interior may enter into cooperative agreements to carry out the provisions of the Act, and the Comptroller General is provided access for audit purposes to records pertinent to the cooperative agreements. (86 Stat. 392)

Public Law 92-346, July 13, 1972, 86 Stat. 462, to amend the Act of September 30, 1965, relating to high-speed ground transportation, adds a new section 510 to the Interstate Commerce Act to provide for audit by the Comptroller General of financial transactions of railroads receiving loan guarantees in any case where the loan is still outstanding or where payment has been made by the United States as a result of the guarantee. The Comptroller General is provided access to the pertinent records and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. A report of each audit is to be made to the Congress. (86 Stat. 463)

Public Law 92-449, September 30, 1972, 86 Stat. 748, the Communicable Disease Control Amendments of 1972, contains as Title II, the National Venereal Disease Prevention and Control Act, which authorizes grants to States and to other public or nonprofit private entities for projects and programs for the conduct of research, demonstrations, and training for the prevention and control of venereal disease. The Comptroller General is provided access to the records of grant recipients pertinent to such grants. (86 Stat. 753)

Public Law 92-484, October 13, 1972, 86 Stat. 797, Technology Assessment Act of 1972, establishes an Office of Technology Assessment for the Congress as an aid in the identification and consideration of existing and probable impacts of technological application. The Comptroller General is a statutory member of the Technology Assessment Advisory Council. (86 Stat. 800) Financial and administrative services for the Technology Assessment Office are to be provided by the General Accounting Office. (86 Stat. 802) The Comptroller General is provided access to records for audit and examination purposes of those entering contracts with the Office. (86 Stat. 800)

Public Law 92-500, October 18, 1972, 86 Stat. 816, the Federal Water Pollution Control Act Amendments of 1972, require the Comptroller General to conduct a study and review of the research, pilot and demonstration programs related to prevention and control of water pollution conducted or supported by the Federal Government to assess conflicts between, and the coordination and efficacy of, such programs and make a report by October 1, 1973, in order to assist the Congress in the conduct of oversight responsibilities. (86 Stat. 897)

The President is to utilize GAO in the conduct of a study of ways of utilizing all the various resources, facilities and personnel of the Federal Government in order most efficiently to carry out the objectives of the Federal Water Pollution Control Act. (86 Stat. 899)

The budget and audit provisions of the Government Corporation Control Act requiring audit by GAO are applicable to the Environmental Financing Authority established by the Act. (86 Stat. 902)

The Comptroller General is provided access to the records of water pollution control grant recipients under the Act. (86 Stat. 885)

Public Law 92-506, October 19, 1972, 86 Stat. 907, provides grants for Allen J. Ellender fellowships to disadvantaged secondary school students and their teachers to be made by the Commissioner of Education to the Close Up Foundation of Washington, D. C., to increase understanding of the Federal Government. The Comptroller General is provided access to records pertinent to any grant. (86 Stat. 908)

Public Law 92-512, October 20, 1972, 86 Stat. 919, State and Local Fiscal Assistance Act of 1972, requires the Comptroller General to make such reviews of the work done by the Secretary of the Treasury, the State governments, and the units of local government as may be necessary for the Congress to evaluate compliance and operation incident to allocation and payment of funds. (86 Stat. 934)

In order to qualify for payment, a State or local unit of Government must use fiscal, accounting, and audit procedures which conform to guidelines established by the Secretary after consultation with the Comptroller General and provide the Comptroller General access to records which may reasonably be required for purposes of reviewing compliance and operations. (86 Stat. 932)

Public Law 92-517, October 21, 1972, 86 Stat. 999, National Capital Area Transit Act of 1972, provides the Comptroller General access to records of the Washington Metropolitan Area Transit Authority, and any company with which the Transit Authority is conducting negotiations incident to acquisition of the mass transit bus system in the National Capital area, and any company eligible to receive or receiving any funds authorized by the Act. The Comptroller General is also authorized to inspect any facility or real or personal property of the Transit Authority or of such companies. (86 Stat. 1004)

Public Law 92-541, October 24, 1972, 86 Stat. 1100, Veterans' Administration Medical School Assistance and Health Manpower Training Act of 1972, authorizes grants for pilot programs for assistance in the establishment of new State medical schools, grants to affiliated medical schools and assistance to health manpower training institutions to increase production of professional and other health personnel. The Comptroller General is provided access to records of the recipients of any assistance which are pertinent to such assistance. (86 Stat. 1102)

Public Law 92-573, October 27, 1972, 86 Stat. 1207, Consumer Product Safety Act, establishes a Consumer Product Safety Commission and provides the Comptroller General access to records of the recipient of any grant or contract for product safety information and research. (86 Stat. 1229) Incident to the promulgation of product safety standards, the Comptroller General is provided access to records relevant to the development of such recommended standards or to the expenditure of any contribution of the Commission for the development of such standards. (86 Stat. 1214)

Public Law 92-583, October 27, 1972, 86 Stat. 1280, Coastal Zone Management Act of 1972, authorizes management program development and administration grants to coastal zones and provides access to grant recipients records by the Comptroller General. (86 Stat. 1287)

Public Law 92-591, October 27, 1972, 86 Stat. 1304, Emergency Rail Facilities Restoration Act, authorizes the Secretary of Transportation to make loans as he deems appropriate, in an aggregate amount not to exceed $48 million to railroads for the purpose of restoring or replacing railroad facilities, equipment, or essential services damaged or destroyed as a result of the natural disasters which occurred during the month of June 1972. The Comptroller General is provided access to records he determines necessary to effectively audit financial transactions and operations carried out by the Secretary in the administration of the Act. He is to report to Congress on the results of any such audits as are appropriate. (86 Stat. 1307)

Public Law 92-607, October 31, 1972, 86 Stat. 1498, Supplemental Appropriations Act, 1973, requires that all grant agreements provide for GAO access to records of the grantee which bear exclusively upon the Federal grant in the case of manpower training services of the Manpower Administration, Department of Labor (86 Stat. 1501) and the economic opportunity program of the Office of Economic Opportunity (86 Stat. 1503).

B. PRIOR TO THE NINETY-SECOND CONGRESS

Housing Act of 1954 (Public Law 560, 83d Cong., approved Aug. 2, 1954, 68 Stat. 590)

Housing Act of 1961 (Public Law 87-70, approved June 30, 1961, 75 Stat. 149)

Civil Defense Act Amendment (Act of August 8, 1958, Public Law 85-606, 72 Stat. 532)

Area Redevelopment Act (Public Law 87-27, approved May 1, 1961, 75 Stat. 47)

Communications Act Amendment--Educational Television (Public Law 87-447, approved May 1, 1962, 76 Stat. 64)

Trade Expansion Act (Public Law 87-794, approved Oct. 11, 1962, 76 Stat. 872)

Aircraft Loan Guaranty Program (Public Law 87-820, approved Oct. 15, 1962, 76 Stat. 936)

Clean Air Act (Public Law 88-206, approved Dec. 17, 1963, 77 Stat. 392)

Federal Airport Act Amendment (Public Law 88-280, approved Mar. 11, 1964, 78 Stat. 158)

Urban Mass Transportation Act of 1964 (Public Law 88-365, approved July 9, 1964, 78 Stat. 302)

Historical Collection Grants (Based on sec. 503 of the Federal Property and Administrative Services Act of 1949, as amended by Public Law 88-383, approved July 28, 1964, 78 Stat. 335)

Hospital and Medical Facilities Amendments of 1964 (Public Law 88-443, approved Aug. 18, 1964, 78 Stat. 447)

Land and Water Conservation Fund Act of 1965 (Public Law 88-578, approved Sept. 3, 1964, 78 Stat. 897)

Appalachian Regional Development Act of 1965 (Public Law 89-4, approved Mar. 9, 1965, 79 Stat. 5)

Water Resources Planning Act (Public Law 89-80, approved July 22, 1965, 79 Stat. 244)

Mental Retardation Facilities and Community Mental Health Centers Construction Act Amendments of 1965 (Public Law 89-105, approved Aug. 4, 1965, 79 Stat. 427)

Agricultural Research Grants (Public Law 89-106, approved Aug. 4, 1965, 79 Stat. 431)

Public Works and Economic Development Act of 1965 (Public Law 89-136, approved Aug. 26, 1965, 79 Stat. 552)

State Technical Services Act of 1965 (Public Law 89-182, approved Sept. 14, 1965, 79 Stat. 679)

Water Quality Act of 1965 (Public Law 89-234, approved Oct. 2, 1965, 79 Stat. 903)

Heart Disease, Cancer, and Stroke Amendments of 1965 (Public Law 89-239, approved Oct. 6, 1965, 79 Stat. 926)

Medical Library Assistance Act of 1965 (Public Law 89-291, approved Oct. 22, 1965, 79 Stat. 1059)

Poverty Program Grants (Supplemental Appropriation Act, 1966, Public Law 89-309, approved Oct. 31, 1965, 79 Stat. 1133)

Allied Health Professions Personnel Training Act of 1966 (Public Law 89-751, approved Nov. 3, 1966, 80 Stat. 1222)

Veterans Hospitalization and Medical Services Modernization Amendments of 1966 (Public Law 89-785, approved Nov. 7, 1966, 80 Stat. 1386)

Economic Opportunity Amendments of 1966 (Public Law 89-794, approved Nov. 8, 1966, 80 Stat. 1451)

Proverty Program Grants (Supplemental Appropriation Act, 1968, Public Law 90-239, approved Jan. 2, 1968, 81 Stat. 773)

Appalachian Regional Development Act Amendments of 1967 (Public Law 90-103, approved October 11, 1967, 81 Stat. 257)

Air Quality Act of 1967 (Public Law 90-148, approved Nov. 21, 1967, 81 Stat. 485)

Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351, approved June 19, 1968, 82 Stat. 208)

Radiation Control for Health and Safety Act of 1968 (Public Law 90-602, approved October 18, 1968, 82 Stat. 1173)

Guam Development Act of 1968 (Public Law 90-601, approved Oct. 17, 1968, 82 Stat. 1172)

Intergovernmental Corporation Act of 1968 (Public Law 90-577, approved Oct. 16, 1968, 82 Stat. 1098)

Alcohol Abuse and Alcoholism Prevention Programs (Public Law 91-616, approved Dec. 31, 1970, 84 Stat. 1848)

Elementary and Secondary Education Assistance Programs (Public Law 91-230, approved April 13, 1970, 84 Stat. 121)

Intergovernmental Personnel Act of 1970 (Public Law 91-648, approved January 5, 1971, 84 Stat. 1909)

Emergency Rail Services Act of 1970 (Public Law 91-663, approved January 8, 1971, 84 Stat. 1975)

Occupational Safety and Health Programs (Public Law 91-596, approved December 29, 1970, 84 Stat. 1615)

Manpower Training Grant Programs (Public Law 91-667, approved January 11, 1971, 84 Stat. 2001)

U. S. Tourism Grants (Public Law 91-477, approved October 21, 1970, 84 Stat. 1071)

INTERNATIONAL ACTIVITIES

We have been experiencing increasing difficulties in obtaining access to information needed in our reviews and evaluations of programs involving our relations with foreign countries and United States participation in international lending institutions. The Departments of Defense, State, and Treasury have employed delaying tactics in preventing our access to necessary records. Information and records have been withheld on the basis that they were internal working documents or that they disclosed tentative planning data. The most serious interference has resulted from restraints placed upon agency officials which require them with more and more frequency to refer to higher authority for clearance before making records available to our staff.

On August 30, 1971, the President invoked executive privilege to withhold information which had been requested by the Senate Foreign Relations Committee relating to the Military Assistance Program. The President determined that it would not be in the public interest to provide to the Congress the basic planning data on military assistance that was requested by the Chairman of the Senate Foreign Relations Committee, and he directed the Secretary of State and the Secretary of Defense not to make available to the Congress any internal working documents which would disclose tentative planning data on future years of the Military Assistance Program which are not approved executive branch positions.

Subsequent to this action we noted a general increase in the volume of documents that operating officials were referring to higher authority

for approval for release to our auditors. This practice added to the delays in obtaining access to documents that had hampered our audit efforts in the past. Although absolute denial of access to a document is quite rare, our reviews have been hampered and delayed by the time-consuming processes employed by the various organizational elements within and between the executive agencies. These delays occur in screening records and in making decisions as to whether such records are releasable to GAO. It is not unusual for our staff people to request access to a document at an overseas location and to be required to wait several weeks while such documents are screened through channels from the overseas posts and through the hierarchy of the departments involved.

The increasing concern of the Comptroller General, especially with actions within the Department of Defense that were having the effect of denying GAO access to information and documents needed to carry out our responsibilities for review of international activities of the Department of Defense, in particular military assistance activities, prompted him to write to the Secretary of Defense on October 13, 1971. He cited examples of our access problems and pointed out specific DOD instructions and directive which, we believed, had created an atmosphere that was discouraging overseas agency officials from cooperating with GAO personnel. In reaching for a solution to this complex problem, the Comptroller General summarized his position to the Secretary of Defense as follows:

> I am most interested, as I am sure you are, in establishing a mutual accommodation within which we can carry out our respective responsibilities; with due regard to the sensitivities of the matters under review.

I believe you can appreciate the depth of my concern at what appears to be an increasing effort within the Department of Defense to restrict the General Accounting Office's capability to carry out its responsibilities to the Congress in the field of international matters.

To clear the air and set the stage for joint efforts to establish better working relationships I believe that a personal expression of your views communicated to your representatives in Washington and overseas would be extremely helpful. We would then be glad to work with the Assistant Secretary of Defense (Comptroller), or others that you designate, in the interest of accomplishing mutually acceptable working arrangements.

On January 27, 1972, the Secretary of Defense replied, stating:

At the outset, let me assure you that neither the Assistant Secretary of Defense (ISA) nor myself condone any actions which could be interpreted as restricting your auditors from carrying out their responsibilities in the field of international matters or discouraging overseas officials from cooperating with your auditors in the performance of their statutory responsibilities.

He also indicated a need and intent to continue to screen the files of the Department before making them available for our review and stated:

Papers in these files originate within as well as outside the Department, including The White House, and Department of State. I am sure that you appreciate that merely because such papers are in our files we cannot release them to GAO without the express approval of the originator. Fortunately, however, it is only on rare occasions that GAO auditors actually need access to such papers to complete their audits or reviews. The matter of access to such papers must, I believe, continue to be handled on a case-by-case basis. In the future, when the question of access to sensitive documents in the international affairs area arises, I have asked the Assistant Secretary of Defense (ISA), when he believes that access to a particular document should be denied, that he consult with the Assistant Secretary of Defense (Comptroller) and the General Counsel prior to refusing access.

The Secretary suggested that to clear the air and set the stage to establish better working relationships that DOD and GAO send representatives to some overseas locations with a view to creating an atmosphere of mutual cooperation and understanding.

Since the exchange of letters we have been meeting with Defense officials in an attempt to establish mutual working arrangements within which we can carry out our responsibilities. While we have vigorously pursued this matter with agency officials, we see no real breakthrough which will solve our problem. The most serious interference is in the restraints which have been placed upon agency officials overseas and which require them more and more to refer to Washington for clearance before making documents available to our staffs. Although these are not termed refusals, they come close because of the interminable delays that result from having to refer routine matters through channels to Washington.

On March 15, 1972, the President invoked executive privilege with respect to the foreign assistance program and international information activities. In a memorandum to the Secretary of State and the Director, United States Information Agency he directed these officials not to make available to the Congress any internal working documents which would disclose tentative planning data--such as is found in the Country Program Memoranda and the Country Field Submissions--and which are not approved positions.

Since then we have experienced some tightening up on our access to documents. For example, the Agency for International Development on March 23, 1972, instructed its operating personnel as follows:

* * * * *

> In order to carry out the President's directive, A.I.D. Country Field Submissions should not be disclosed to representatives of the Congress or the General Accounting Office. Likewise, disclosure should not be made of any other document from an A.I.D. Assistant Administrator, A.I.D. Office Head or A.I.D. Mission Director to higher authority containing recommendations or planning data not approved by the Executive Branch concerning overall future budget levels for any fiscal year for any category of assistance (e.g., Development Loans, Technical Assistance, Supporting Assistance, or PL-480) for any country.
>
> In lieu of the disclosure of such documents, the President has directed that Congress be provided with "all information relating to the foreign assistance program and international information activities" not inconsistent with his directive. Ordinarily, the substantive factual information contained in these documents should be disclosed through means of oral briefings, testimony, special written presentations and such other methods of furnishing information as may be appropriate in the circumstance.
>
> The General Counsel should be advised of any Congressional or GAO requests for any document described in [the first paragraph] above or for files or records containing such a document. The General Counsel should also be advised of requests for other documents which raise Executive Privilege questions, whether under the rationale of the President's March 15 directive or otherwise, and a decision should be obtained from the General Counsel concerning the availability of the document for disclosure before the document is disclosed.

On May 8, 1972, the Under Secretary of State issued a memorandum to all Agency Heads, Assistant Secretaries, and Office Heads on the subject of executive privilege. This memorandum cites the Presidential Directive of March 15, 1972, and contains instructions similar to those put out by AID.

However, it goes a bit further in broadening the field of applicability by stating:

> It will be noted that the President's directive is not strictly limited to Country Program Memoranda and Country Field Submissions, but applies also to other, similar internal working documents in the foreign assistance and international information fields which would disclose tentative planning data and which are not approved positions. Undoubtedly, specific questions will arise in the future as to whether or not the President's directive applies to particular congressional requests for disclosure. Such questions should be resolved in consultation with the Office of the Legal Adviser.

There is evidence that the executive agencies may try to satisfy GAO's need for access to records by providing the required information by means other than direct access to the basic documents, especially in cases where such documents are considered to be internal working documents. This would not be acceptable unless we are able to satisfy ourselves that the data provided to us is an accurate presentation of the substantive information contained in the basic documents.

In summary, our access to the records and documents or other materials we need to carry out our responsibilities for reviewing programs relating to international activities has been increasingly difficult. It is a matter of degree, but it has seriously interfered with the performance of our responsibilities. The most serious interference is in the restraints which have been placed upon agency officials overseas and which require them more and more to refer to Washington for clearance before making documents available to our staff. Although these are not termed refusals, they come close because of the interminable delays that result from having to refer routine matters through channels to Washington.

In addition to the unnecessary cost and waste of time this involves, there is the increased risk of our making reports without being aware of significant information and the increased risk of our drawing conclusions based on only partial information.

We are seriously concerned with the increasing restrictions that have been imposed on overseas officials in particular, that take away a large measure of their discretion for dealing with GAO personnel, and we have conveyed this to the agencies.

INTERNATIONAL LENDING INSTITUTIONS

Beginning in the fall of 1970, we undertook to study U.S. participation in international lending institutions--the World Bank, International Development Association, Inter-American Development Bank, and Asian Development Bank. During our initial survey and in our later reviews relating to specific institutions, we encountered difficulties in obtaining information from the Treasury Department.

We experienced long delays in obtaining certain information. For example, access to monthly operations reports and to loan status reports for one of the institutions that we requested in December 1970 was not granted until August 1971 and then only after repeated requests.

We were refused access to several categories of documents by Treasury Department officials. These included the recorded minutes of the meetings of the institutions' board of directors, periodic progress reports on the status of projects being financed by the institutions, and a consultant's report on management practices of one of the institutions. Also, although Treasury officials advised us that they

had refused access only to internal documents which they received in confidence from the institutions, we were refused access to certain documents which, as far as we could determine, were not documents furnished by the institutions but rather were documents prepared by U.S. officials for use by other U.S. officials.

We were not auditing the records of the Inter-American Development Bank as such but only those documents that had been provided by the Inter-American Development Bank to the Executive Director and were available for his use in the exercise of his management responsibilities. We believe that these records should have been available to us in our review which was on the U.S. system for appraising and evaluating Inter-American Development Bank projects and activities. Any report on this subject would necessarily be lacking to the extent to which information used by the United States in evaluating Bank projects was not made available to us during our examination. We see no valid basis for Treasury's refusal to provide access to the records we requested.

INTERNAL REVENUE SERVICE

GAO's review efforts at the Internal Revenue Service had been materially hampered, and in some cases terminated, because of the continued refusal by IRS to grant GAO access to records necessary to permit an effective review of IRS operations and activities.

Without access to necessary records, GAO cannot effectively evaluate the IRS administration of operations involving billions of dollars of annual gross revenue collections and millions of dollars in appropriated

funds. Such an evaluation, we feel, would greatly assist the Congress in its review of IRS budget requests and in its appraisal of IRS operations and activities. Without such access, the management of this very important and very large agency will not be subject to any meaningful independent audit.

GAO has taken every opportunity to impress upon IRS officials that it is not interested in the identity of individual taxpayers and does not seek to superimpose its judgment upon that of IRS in individual tax cases; rather, GAO is interested in examining into individual tax transactions only for the purpose of, and in the number necessary to serve as a reasonable basis for, evaluating the effectiveness, efficiency, and economy of selected IRS operations and activities. GAO has, in general, directed its efforts toward those areas where it believed that improvements in current operations would bring about better IRS administration of programs, activities, and resources.

It is the position of IRS that no matter involving the administration of the internal revenue laws can be officially before GAO and therefore we have no audit responsibility. The Commissioner of IRS, in a letter to the Comptroller General dated June 6, 1968, stated:

> * * * I must note that the [Chief Counsel, IRS] opinion holds that the Commissioner of Internal Revenue is barred by Sections 6406 and 8022 of the Internal Revenue Code from allowing any of your representatives to review any documents that pertain to the administration of the Internal Revenue Laws. Thus, federal tax returns and related records can be made available to you only where the matter officially before GAO does not involve administration of those laws.

Under the provisions of 26 U.S.C. 6103, tax returns are open to inspection only on order of the President and under rules and regulations prescribed by the Secretary of the Treasury or his delegate and approved by the President. Regulations appearing in 26 CFR 301.6103(a)-100-107 grant several Government agencies specific right of access to certain tax returns. Our Office is not included among those agencies. The regulation applicable to our Office, 26 CFR 301.6103(a)-1(b)(f), provides that the inspection of a return in connection with some matter officially before the head of an establishment of the Federal Government may be permitted at the discretion of the Secretary or Commissioner upon written application of the head of the establishment.

IRS has permitted Federal agencies, States, individuals, contractors, and others to have access to tax returns and records. GAO has been given access to individual tax returns only when the return is needed in connection with another matter in which GAO is involved or when we have made reviews at the request of the Joint Committee on Internal Revenue Taxation. Otherwise we have been denied records requested for reviews of IRS operations. The reviews of IRS conducted at the request of the Joint Committee have been made pursuant to an arrangement whereby GAO and the Joint Committee agreed on certain priority matters involving the administration of the internal revenue laws. Under this arrangement we, in effect, make reviews for the Joint Committee, and we have had the complete cooperation of the Service.

ECONOMIC STABILIZATION PROGRAM

Another access to records problem arose when GAO attempted, pursuant to a congressional request, to review the effectiveness of IRS activities in monitoring prices. IRS did not formally deny GAO the right to review records of the Economic Stabilization Program. Rather, the General Counsel of the Treasury Department submitted a proposed "memorandum of understanding," which was to be signed by himself, the Comptroller General, and the Commissioner and Chief Counsel of IRS, as a condition precedent to permitting GAO to perform the review.

In our opinion, the memorandum of understanding would have negated GAO's independence and limited GAO's right to records to such an extent that any work undertaken would not have provided a basis to properly perform the audit. Accordingly, the General Counsel of the Treasury Department was advised that the memorandum of understanding was not acceptable to GAO. Subsequently, we advised the Treasury Department in January 1973 that, since Phase II of the Economic Stabilization Program was being phased out, there was no practical purpose in pursuing the matter.

FEDERAL DEPOSIT INSURANCE CORPORATION

The long and involved history of controversy between GAO and the Federal Deposit Insurance Corporation over GAO's right of access to certain of the Corporation's records appears in the published hearings of the House Committee on Banking and Currency of May 6 and 7, 1968. Those hearings resulted in the introduction of H.R. 16064, 90th Congress, a bill to amend

the Federal Deposit Insurance Act with respect to the scope of audit of FDIC by GAO.

Essentially what is involved in this dispute is that although our Office is required by section 17 of the Federal Deposit Insurance Act (12 U.S.C. 1827) to conduct annual audits of the Corporation, we have been unable to fully discharge our responsibilities because FDIC has not permitted us unrestricted access to examination reports, files and other records relative to the banks which it insures.

It is the position of the Corporation that our right of access to its records is limited to those administrative or housekeeping records pertaining to its financial transactions. It is GAO's position that, because the financial condition of the Corporation is inseparably linked with the manner in which it supervised the banks which it insures, we cannot report to the Congress on the financial condition of the Corporation without evaluating the significance of its contingent insurance indemnity obligation for the banks.

At the time section 17 was being considered by the Congress, it developed that, although GAO and FDIC had agreed on the language included therein, divergent views were held by GAO and FDIC as to its meaning. Each made its position known to the House Committee on Banking and Currency, but the matter was not resolved. This difference of opinion still exists with both the Corporation and GAO feeling that the present law supports their respective positions. Repeated efforts to resolve the matter administratively have failed, and, for this reason, the Comptroller General in his testimony of March 6, 1968, before the House Banking and

Currency Committee, recommended that the Federal Deposit Insurance Act be amended to specifically provide for an unrestricted access to the examination reports and related records pertaining to all insured banks.

EMERGENCY LOAN GUARANTEE BOARD

The Emergency Loan Guarantee Board, established by the Emergency Loan Guarantee Act (Pub. L. 92-70), through its Chairman--the Secretary of the Treasury--has taken the position that it was not the intent of the Congress in establishing the Board to grant GAO authority to review Board activities. The Board was established to make guarantees or to make commitments to guarantee lenders against loss of principal or interest on loans to major business enterprises whose failures would seriously and adversely affect the economy or employment of the Nation or a region thereof.

GAO believes that it has the responsibility and authority to review the Board's activities including decisions of the Board in approving, executing, and administering any loan guaranteed by the Board. The Board's position, as indicated, is that there is nothing in the Emergency Loan Guarantee Act or its legislative history which would provide for a GAO review of all Board activities and that the Congress might need to pass additional legislation to make it clear that GAO has this authority. The main thrust of the Board's position is that the congressional review of loan guarantee matters is carefully spelled out in the guarantee act; GAO is directed to audit the borrower and to report its findings to the Board and to the Congress; and the Board is directed to make a "full

report" of its operations to the Congress. It is our position that, as an agency of Government, the Board is clearly subject to audit examination by GAO and that the records of the Board are required to be made available to GAO under its basic authorities. Those authorities are section 312 of the Budget and Accounting Act, 1921 (31 U.S.C. 53); section 206 of the Legislative Reorganization Act of 1946 (31 U.S.C. 60); subsections 117(a) and (b) of the Accounting and Auditing Act of 1950 (31 U.S.C. 67(a), (b)); and section 204 of the Legislative Reorganization Act of 1970 (84 Stat. 1140).

It is our view that under these basic authorities GAO has responsibility for auditing the activities of the Board and thus has attending right of access to such information and documents as the Board uses in reaching its decisions. Further, it is our view that neither the failure to spell out explicitly that GAO has such responsibility and right of access nor the fact that under Pub. L. 92-70 GAO was given explicit authority to audit the borrower diminishes in any way the basic audit authorities that we rely upon.

While the records in this case were subsequently made available, the Treasury did so, however, only because of the intervention of the House and Senate Banking and Currency Committees. In making the records available, however, the Executive Director of the Board stated that "we continue to believe that the GAO does not have the statutory authority to review the Board's internal records relating to its decisionmaking process." The Board supported this position in its first Annual Report of July 31, 1972.

COUNTERVAILING DUTY STATUTE

In 1971, pursuant to a congressional request, GAO sought to review the Department of the Treasury's administration of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303), which requires the Secretary of the Treasury to levy a countervailing duty on any dutiable product imported into the United States for which the producing nation has provided a production or export grant or bounty.

In January 1973, we decided that our efforts to obtain the necessary records to make the review were unsuccessful.

EXCHANGE STABILIZATION FUND

By Public Law 91-599, approved December 30, 1970, the Congress directed that the administrative expenses of the Exchange Stabilization Fund, established by section 10 of the Gold Reserve Act of 1934, be audited by the General Accounting Office and provided certain access to records authority. The legislative history made it clear that the audit should start with fiscal year 1972, and the GAO started efforts to obtain access in the Spring of 1972. After a long period of refusals and delays, the Treasury Department finally agreed in March 1973 to provide GAO access to all financial records and relevant supporting information on the administrative expenses of the Exchange Stabilization Fund for 1972. The audit has been started.

CORPORATION FOR PUBLIC BROADCASTING

The Public Broadcasting Act of 1967 provides that the Public Broadcasting Corporation shall be audited by the General Accounting Office in accordance with the principles and procedures applicable

to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. In attempting to comply with our responsibility under this Act, we have requested such documents as minutes of the meetings of the Board of Directors and files relating to a long-term lease for office space entered into by the Corporation. In both instances we were initially denied access to this data. Subsequently, this information was made available to us and enabled us to more properly evaluate certain operations of the Corporation.

On August 10, 1972, an internal Corporation memorandum advised Corporation officials that if GAO wished "to examine documents setting forth policies or procedures or to pursue a detailed examination of how decisionmaking takes place or analyzing program expenditures to determine the proportion received by various recipients or any of a variety of tasks they might pursue along this line, I believe you should simply state you feel such requests are beyond the scope of their activity and that you decline to pursue the matter with them." On August 22, 1972, the Comptroller General advised the Acting President of the Corporation that the GAO's responsibility for auditing the Corporation included audits which could lead to an identification of needed management improvements together with suggestions as to courses of action which should be considered to correct management deficiencies or otherwise strengthen the management of the Corporation.

It was only during July of this year after we had proposed a legislative clarification of the Public Broadcasting Act of 1967 that the Corporation agreed to permit us access to its records which we had requested in August 1972.